

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TANIELLE SHURNEY,
Plaintiff,

vs.

No. CA 05-196 Erie
CIVIL ACTION
ELECTRONICALLY FILED

PLEADING
**SCOTT'S ECONO INN, INC.
SCOTT'S SPLASH LAGOON,
INC.**

**SEAN PIERCE, INDIVIDUALLY
AND IN
HIS CAPACITY AS A TROOPER
OF THE PENNSYLVANIA
STATE POLICE**

**JOHN DOE, INDIVIDUALLY
AND IN HIS CAPACITY AS THE
SUPERVISOR OF TROOPER
SEAN PIERCE OF THE
PENNSYLVANIA STATE
POLICE**

Defendants

DEFENDANT SCOTT ECONO INN, INC.'S REPLY BRIEF

Defendant, Scott's Econo Inn, Inc., has filed motion for summary judgment jointly with defendant Scott's Splash Lagoon Inc. Plaintiff has filed brief in opposition to defendants join motion. Defendant Scott's Econo Inn, now sets forth this Reply Brief.

STATEMENT

On June 30, 2004, Tonya Traylor, a resident of Streetsboro, Ohio discovered that her personal bank account had been accessed and her funds taken through the

unauthorized use of her debit card number. Tonya Traylor learned that a total of four unauthorized purchases were made, including a Splash Lagoon reservation and that \$198.79 had been transferred from her bank account to pay for this reservation. The Splash Lagoon reservation was made by telephone by a person that identified herself as Tanielle Shurney. Tonya Traylor's debit card number was used to place the reservation and there is no issue that the use of Ms. Traylor's debit card to place this reservation was illegal. Tonya Traylor, on learning of the illegal use of her debit card immediately visited the Streetsboro Police Department where she provided this information to Officer Jon Hurley, who prepared a criminal complaint and instituted a criminal investigation.

Tonya Traylor then contacted Scott's Splash Lagoon and informed them of the unauthorized use of her debit card number. Officer Hurley also contacted Scott's Splash Lagoon and informed employee Patty Purchase that a criminal investigation had been commenced into the unauthorized use of Tonya Traylor's debit card number for the reservation. Officer Hurley after alerting the Pennsylvania State Police also asked Scott's Econo Inn and Splash Lagoon employees to cooperate in the investigation. Subsequently, the Pennsylvania State Police also requested that Splash Lagoon cooperate in the investigation by calling when the person appeared at the Scott's Econo Inn to claim the reservation.

On July 3, 2004, Ms. Shurney appeared to claim her reservation at the Scott's Econo Inn, and the Pennsylvania State Police were simply so notified by the reservation clerk. Plaintiff personally completed the reservation. Plaintiff was arrested by Trooper Pierce, who prepared and presented criminal complaint against plaintiff and affidavit of probable cause. Plaintiff was taken before District Justice Frank Abate, and plaintiff

thereafter incarcerated pending bail. At her preliminary hearing, criminal charges were dismissed by District Justice Dwyer, reportedly due to a lack of evidence to show that this individual had personally used the stolen debit card information in making the reservation. Plaintiff claims that the reservations were made by another individual, Tracey Smith, also a Cleveland resident, who at times was identified by plaintiff as her sister, cousin, and close friend.

No evidence exists that Scott's Econo Inn, or Splash Lagoon employees requested the arrest, prosecution or incarceration of Ms. Shurney. That is, although defendant Scott's Econo Inn, believes that the actions of the state police in this matter, including the actions of defendant Trooper Sean Pierce, were lawful, and based on probable cause with reasonable belief that plaintiff had committed the crimes for which she was accused, and that plaintiff has no valid civil rights action against any of the parties, nonetheless, this defendant respectfully submits that it was not a party to plaintiff's arrest or prosecution.

Contrary to the allegations contained in plaintiff's Complaint, defendant Scott's Econo Inn did not institute the criminal investigation, did not arrest plaintiff, did not request plaintiff's arrest, did not participate in plaintiff's criminal prosecution, and did not incarcerate or cause plaintiff's incarceration. Under these circumstances defendant and defendant's hotel reservation clerk were not acting in collusion with the state police and were not state actors within the meaning of the civil rights laws. In short, defendant Scott's Econo Inn, Inc. has not caused plaintiff the alleged loss of any civil rights.

LEGAL ARGUMENT

Plaintiff claims that this defendant, Scott's Econo Inn, a private citizen is liable under the federal Civil Rights Act, however plaintiff fails to assert in plaintiff's Brief in

Opposition to Defendants Joint Motion for Summary Judgment any statutory or case law in support of her claim against the private corporate citizens. Under the circumstances of the case *sub judice*, defendant Scott's Econo Inn, cannot be held under the federal civil rights law, as Scott's Econo Inn, is not a state actor.

The Third Circuit has held that a merchant cannot be liable under § 1983 unless the police have a prearranged plan with the merchant under which the police will arrest anyone identified by the merchant as a shoplifter without independently evaluating whether there is probable cause for the arrest. *Cruz v Donnelly*, 727 F2d 79 (3rd Cir Pa 1984). Under this view, even the fact that a merchant orders police officers to take certain action would not be sufficient to demonstrate a prearranged plan unless it can be shown that the officers would not take the same action as a part of a routine investigation.

In addition, to the argument, and authority cited in defendants Joint Brief in Support of Motion for Summary Judgment, defendant Scott's Econo Inn respectfully submits that it is entitled to summary judgment, as there is absolutely no evidence of any "plan" between the Pennsylvania State police and defendant Scott's Econo Inn. The record simply confirms that defendant was contacted by the Pennsylvania State police with the request that if an individual appears to claim the reservation, that the Pennsylvania State police be notified. Defendant Scott's Econo Inn was not part of a plan to arrest the plaintiff. Defendant Scott's Econo Inn did not request plaintiff's arrest. Defendant Scott's Economy Inn did not take plaintiff into custody or detain plaintiff. Defendant did not swear out any criminal complaint against the plaintiff. Respectfully, the plaintiff's arrest was based on the joint investigation conducted by the Streetsboro Police Department and the Pennsylvania State police, who were conducting investigation

into the unauthorized and criminal use of Tonya Traylor's debit card account, which investigation originated with Tonya Traylor's complaint filed with the Streetsboro Police Department.

For these reasons on the authority cited in this Brief and Defendants Joint Brief, defendant Scott's Econo Inn, Inc. respectfully request that this Court grant defendants Motion for Summary Judgment and dismiss this action with prejudice.

RESPECTFULLY SUBMITTED,

By: "s/"Gerald J. Hutton, Esq.
Gerald J. Hutton, Esquire
PA ID No. 23098

BASHLINE & HUTTON
One Oliver Plaza, Suite 3500
210 Sixth Avenue
Pittsburgh, PA 15222

Telephone: (412) 434-0201
Fax: (412) 434-0521
E-mail:

Gerald.Hutton@libertymutal.com

Attorneys for Scott's Econo Inn, Inc.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing DEFENDANT SCOTT ECONO INN, INC'S REPLY BRIEF was electronically served, on this 2nd day of May, 2006, upon the following counsel of record:

A.J Adams, Esquire
602 West 9TH Street
Erie, PA 16502
(Attorney for Plaintiff)

Christian D. Barefoot, Esquire
OFFICE OF ATTORNEY GENERAL
6th Floor Manor Complex
564Forbes Avenue
Pittsburgh, PA 15219
(Attorney For Trooper Sean Pierce)

Gary D. Bax, Esquire
900 State Street, Suite 202
Erie, PA 16501
Attorney For Scott's Splash Lagoon, Inc.)

BASHLINE & HUTTON

By: "s"/Gerald J. Hutton, Esquire
GERALD J. HUTTON, ESQUIRE
PA I. D. # 23098
Attorneys for Scott's Econo Inn Inc

BASHLINE & HUTTON
Suite 3500, One Oliver Plaza
210 Sixth Avenue
Pittsburgh, PA 15222
Telephone: (412) 434-0201
Fax: (412) 434-0521

Gerald.hutton@libertymutual.com